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AMO's Response to *Municipal Waste Management Powers in Ontario*

Association of Municipalities of Ontario
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MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

Introduction

On March 31, 1992, the Ministry of Municipal Affairs (MMA) and the Ministry of the Environment (MOE) released the MMA's discussion paper, Municipal Waste Management Powers in Ontario. The discussion paper examines options for municipal legislative authority for waste management.

During the past three years, AMO has issued reports recommending reforms to municipal legislative authority for waste management, and has both lobbied, and worked with, the Provincial Government to bring this issue to the forefront. AMO believes that if Ontario's municipalities are to continue to plan for and manage the municipal solid waste systems which they have traditionally overseen, as well as institute many of the new initiatives which they believe are necessary, they need more clearly defined legislative waste management authority. AMO is therefore very pleased that the Government is now initiating the process of legislative reform.

AMO's Response

AMO's response deals with each of the MMA's proposed options for municipal legislative authority in two key areas of waste management: functions and the distribution of authority between tiers of municipal government. In each section, AMO notes the options available, the present system, municipal comments on the options, and its recommended action for reform.

WASTE MANAGEMENT FUNCTIONS

In general AMO recommends that municipal waste management authorities be permissive and not mandatory. The following is a summary of some of the options supported by AMO.

General Waste Management

AMO supports giving municipalities permissive legislative authority to:

- manage solid, liquid and hazardous waste. This authority would include planning, developing, and operating waste management facilities; providing services for collecting, reducing, reusing, recycling, and disposing of discarded material; and the power to develop facilities for waste management activities would include the ability to purchase land for developing such facilities;

- provide treatment and processing facilities which use discarded matter as raw material;
- close, decommission, and provide perpetual care of decommissioned municipal sites;
- increase the penalties for breaching municipal by-laws related to solid waste management, equal to those in the Environmental Protection Act; and
- enter properties for the purpose of conducting soil tests and planning studies related to site selection for waste management facilities.

Regulating the Flow of Waste

AMO supports municipal permissive authority to control the flow of waste generated within their boundaries. However, AMO recommends that other options than those proposed by the MMA for regulating the flow of waste need to be examined and that this should occur within the context of the planning process recommendations made in AMO's response to Initiatives Paper No. 2, Waste Management Planning in Ontario. The Provincial Government should conduct further discussions with municipalities and the private sector on these options.

Compensating Municipalities with Landfill Facilities

AMO agrees that municipalities should have the permissive authority to require compensation from waste disposal operators but that the amount of compensation be restricted to waste management related costs. The compensation would be subject to appeal to the Ontario Municipal Board.

Regulating Tipping Fees

AMO supports giving municipalities the permissive authority to regulate tipping fees for all facilities - private or municipal - which are part of their waste management systems in or outside municipal boundaries, in accordance with the waste diversion strategy accepted by the Ministry of the Environment. Private tipping fees should be subject to appeal to the Ontario Municipal Board.

Charging for Waste Management Services

AMO agrees that municipalities be given the permissive authority to charge for collecting and disposing of waste by class, volume, weight, or any criteria they chose.

DISTRIBUTION OF AUTHORITY

The MMA paper looks at options for allocating the main functional powers between the two levels of municipal

government in regional municipal and county systems. AMO states that single tier municipalities should be permitted to assume the same legislative authorities recommended for upper tier municipalities.

AMO supports the option that regional municipalities be granted permissive authority over solid waste disposal; lower tier municipalities be granted authority over 3Rs and retain authority over collection; and upper tier municipalities have the authority to assume collection and 3Rs powers from their local municipalities. In counties, lower tier municipalities should retain all waste management powers, but the county should be granted the authority to assume any or all such powers from lower tier municipalities (as provided in Bill 201, 1989).

OTHER MUNICIPAL AUTHORITIES

In its research for this response, AMO identified one other area which could be addressed through the legislative reforms. AMO recommends amending the legislative authority governing upper tier municipalities to allow upper tiers the ability to broaden the service area of a landfill (which the upper tier has assumed responsibility for from a lower tier) to serve the entire county or region. This could be done with public consultation or other Environmental Protection Act (EPA) requirements, but it should not require a full hearing for a site for which the county or region has taken responsibility.

1 INTRODUCTION

On March 31, 1992, the Ministry of Municipal Affairs (MMA) and the Ministry of the Environment (MOE) released the MMA's discussion paper, Municipal Waste Management Powers in Ontario. The discussion paper examines the critical area of reforming municipalities' legislative, or statutory, authority for waste management. The Association of Municipalities of Ontario (AMO) welcomed the release of the paper and encouraged its member municipalities to respond to its principles and concepts.

During the past three years, AMO has issued reports recommending reforms in this area and then both lobbied, and worked with, the Provincial Government to bring this issue to the forefront. In preparing this response AMO is pleased to be contributing further to the process of reform. The MOE and MMA have said that consultation on the MMA's paper is expected to occur until the end of June. The results of the consultation will be compiled during the summer and both ministries expect the resulting legislative changes will be introduced to the Ontario Legislature by the fall of 1992.

AMO welcomes this discussion and urges the Provincial Government to follow its time-table for reforming this area. Municipal authority for waste management in Ontario is a very critical issue, particularly now that so many new waste management initiatives are being introduced.

If Ontario's municipalities are to continue to plan for and manage the municipal solid waste systems which they have traditionally overseen, as well as institute many of the new initiatives which they believe necessary, they need more clearly defined legislative waste management authority.

2 AMO CALLS FOR LEGISLATIVE REFORM

AMO has been the primary advocate for reform of municipal legislative authority for waste management. AMO started the process in 1989 when it released the first two reports in its waste management series, The

Waste Management Planning and Approvals Process (March 1989) and The Municipal Waste Abatement Strategy (November 1989). Each of these called for several reforms in the legislative authority which Ontario's municipalities have for waste management. When the Provincial Government did not begin to move toward making those reforms, AMO advanced many of its concerns in its third waste management report, Municipal Solid Waste Management: Whose Problem Is It? (August 1990).

In early 1990, AMO also began to address this question during the regular consultation meetings which it held with the Provincial Government. During a February 8, 1990 meeting with then Minister of Environment, the Honourable James Bradley, and then Minister of Municipal Affairs, the Honourable John Sweeney, AMO's representatives called for reform to municipal waste management legislative authority. AMO's representatives reported that municipal solicitors advised that municipalities could not legally proceed with many of the 4Rs activities of reduction, reuse, recycling and recovery of energy-from-waste without the appropriate statutory authority. Then Minister of Municipal Affairs, the Honourable John Sweeney, reported that his ministry's solicitors advised that municipalities could proceed with these unless the legislation stated they could not. The Minister of Municipal Affairs finally agreed during that meeting to establish a joint AMO/MMA/MOE committee to examine, and resolve, the question of municipal statutory authority for municipal solid waste management.

After much discussion, two implementation committees were established with representatives from AMO's Ad Hoc Waste Management Committee and the Ministry of the Environment and Ministry of Municipal Affairs staff. The purpose of the committees was to examine the recommendations made in AMO's first two waste management reports, The Municipal Waste Abatement Strategy (March 1989) and The Waste Management Planning and Approvals Process (November 1989). The committees began to meet in the fall of 1990 and the AMO/MMA/MOE Municipal Waste Abatement Strategy Implementation Committee reviewed all of AMO's recommendations regarding statutory authority.

The committee's report was presented to AMO's Executive Committee and Board of Directors, and to the

MOE and MMA senior managements, in May 1991. At that time, AMO's Executive Committee and Board of Directors approved the contents of the report. The AMO recommendations which the AMO/MMA/MOE Municipal Waste Abatement Strategy Implementation Committee considered and the recommendations which it made to implement these are outlined in the following section. However, the result was that the Ministry of the Environment and Ministry of Municipal Affairs agreed that the work of reforming municipal legislative authority for waste management should immediately proceed. The Ministry of Municipal Affairs then began to develop its discussion paper, Municipal Waste Management Powers in Ontario.

3 RECOMMENDATIONS FOR ACTION

3.1 AMO's Recommendations

During the past three years, AMO has made many recommendations concerning all aspects of waste management, and several of these have specifically addressed the reform of legislative authority for municipal solid waste management. These recommendations have appeared in AMO's policy reports, The Waste Management Planning and Approvals Process (March 1989), The Municipal Waste Abatement Strategy (November 1989), Municipal Solid Waste Management, Whose Problem Is It? (August 1990), and AMO's Policy Position on: Reduction and Reuse (91-11, June 1991).

AMO's specific recommendations are noted throughout this paper. But they have called for improved legislative authority for municipal solid waste management in a wide variety of areas. In particular, they have said the Provincial Government should amend the Municipal Act, and all other relevant municipal legislation, so these:

- provide explicit municipal authority for reduction, re-use, recycling and recovery of waste programs;
- give municipalities authority to mandate source separation of (IC&I) waste;
- give municipalities authority to require waste audits and the right to inspect pursuant to waste bylaws;
- give municipalities authority for conversion of waste;

- give municipalities authority to have inter-municipal acquisition of land for waste management purposes;
- give municipalities authority to enter private property without the owners' consent in order to do waste management planning studies;
- give municipalities permissive authority to impose user-pay fees; and
- give municipalities authority to approve the establishment and continued use of private waste disposal systems and landfills in their jurisdiction in order to allow municipalities to be more effective in managing their areas' solid waste stream. This is particularly important because presently, where a private landfill site co-exists with a public one, municipalities' waste reduction policies - such as bans - can be made ineffective if the private operator chooses not to participate.

3.2 AMO/MMA/MOE Committee Recommendations

When it presented its Final Report in May 1991, the AMO/MOE/MMA Waste Abatement Strategy Implementation Committee specifically addressed the framework necessary for changing municipal solid waste management powers.

In that report, the committee recommended that the following proposal be advanced as a central feature of the public consultation options paper on municipal solid waste management powers. It said that municipalities should be granted the following powers:

Waste Diversion from Disposal:

- to require source separation for domestic and IC&I waste;
- to ban classes of waste from their waste disposal facilities;
- to impose penalties for violating source separation requirements and waste bans;
- to permit that where a municipality has the power to dispose of waste, then it also has the power to require that domestic waste be directed to designated waste disposal sites within its jurisdiction;
- to develop 3Rs programs including manufacturing, producing, and selling any product from solid waste; and

- to enter into agreements regarding 3Rs programs, carry out investigations and research, and acquire patents and licenses.

Regulation of Facilities:

- any agency (private or municipal) to require the consent of the host municipality with waste disposal authority to operate a waste disposal site. This host municipality will be able to impose terms and conditions, including requirement for compensation subject to Environmental Protection Act provisions; and,
- these terms and conditions can be appealed to the Ontario Municipal Board.

Other Powers:

- to impose user charges for waste disposal based on weight, volume, class or any other basis as the council may decide;
- to impose user charges for waste collection based on weight, volume, class or any other basis as the council may decide;
- to enter into private property for purposes of soil testing and planning of solid waste disposal facilities subject to appropriate safeguards; and
- to regulate waste haulage routes.

3.3 Municipal Requests

While AMO and the Provincial Government were making these recommendations, municipalities across Ontario were also beginning to ask the Provincial Government to amend the legislation governing them so their waste management authorities would be more clearly defined or expanded.

By mid-March 1992, the City of Waterloo, City of Peterborough, and City of Kingston had each asked the Provincial Government to permit municipalities to establish a user-pay system for garbage collection or waste management. The City of Kingston had also asked the Province to give municipalities the authority to control out-of-region waste import and various solid waste flows within municipalities.

The Municipality of Metropolitan Toronto had asked the

Provincial Government to: permit it to prosecute anyone who disposes waste in violation of area or Metropolitan municipal by-laws; raise the permissible fine levels to those provided for in sewage control by-laws; permit the court to order expenses incurred by the Metropolitan corporation for clean-up to be repaid; and to provide the regional municipality with authority to engage in recycling activities by granting it legislative authority similar to that contained in section 169b of the Regional Municipality of Waterloo Act.

The Regional Municipality of Hamilton-Wentworth had asked the Provincial Government to provide it with authority to engage in 3Rs activities. It also had asked that the Province provide that regional consent be required to operate a waste disposal site within the regional area and that the region be able to impose terms and conditions on the operator, including the payment of compensation, subject to an appeal to the Ontario Municipal Board.

The Regional Municipality of Haldimand-Norfolk had asked the Province to provide it with recycling powers. The Regional Municipality of Peel had asked the Province to replace the existing waste management legislation governing the regional municipality with comprehensive new waste management legislation. The District Municipality of Muskoka had asked the Province to provide it with legislation transferring all municipal waste management responsibilities to the district level.

3.4 Ministry of the Environment Plans

As AMO and municipalities were asking for reforms to the legislative authority government municipal solid waste management, the Minister of the Environment and her staff were also beginning to propose several initiatives which would necessitate changes in this area.

The changes needed began to become apparent on February 21, 1991, when the Minister of the Environment, the Honourable Ruth Grier, unveiled her Waste Reduction Action Plan (WRAP). In it, she said she planned to:

- implement strong regulatory measures to reduce at source the flow of valuable resources now going to disposal;

- develop the necessary financial and technical systems to divert these materials from landfills and into productive use and reuse;
- help to create healthy markets for materials recovered through 3Rs programs; and
- establish a 3Rs public education program.

The Minister said this was to be done through a program which included:

- mandatory source separation of waste materials for major retail malls, construction and demolition sites, office complexes, hospitality services, educational and medical institutions, and larger manufacturing industries;
- waste audits and waste reduction plans being required for major users of packaging materials plus major industrial, commercial land institutional sectors;
- mandatory recycling for all but the smallest municipalities;
- community composting facilities for leaf and yard waste;
- expanding the number of materials being collected in the Blue Box program and the areas in which they are collected, and providing increased provincial assistance for Blue Box recycling and municipal backyard composting programs;
- cutting the red tape to simplify the task of getting 3Rs facilities into operation while retaining environmental controls and community involvement;
- developing an aggressive marketing strategy and encouraging a strong and sustained demand for source separated used materials;
- developing a comprehensive public education program on waste reduction for the public, schools, municipalities and industries. This would include working with the National Packaging Task Force to eliminate some of the confusion regarding the recycling symbol;
- conducting an environmental audit of the Government of Ontario's activities and finding ways the Provincial Government can contribute to waste reduction and help to support secondary materials markets through government purchasing policies; and
- establishing a provincial Waste Reduction Office to co-ordinate policy and regulatory development.

Since then, the Ministry of the Environment has established the Waste Reduction Office (February 1991),

and introduced (October 1991) and passed (April 1992) Bill 143, An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. It has also released its first three Initiatives Papers. The first paper, Regulatory Measures to Achieve Ontario's Waste Reduction Targets (October 1991), presented four regulations for discussions. These included "permit by rule" regulations to speed up the approval of 3Rs facilities, source separation, audits and work plans for the industrial, commercial, and institutional (IC&I) sector, and mandatory source separation (recycling) and centralized leaf and yard composting for most Ontario municipalities. On March 31, 1992, the Ministry of the Environment (MOE) released Initiatives Paper No. 2, Waste Management Planning in Ontario. It proposed a reform of the waste management master plan system which the Province encourages municipalities to do to produce 20-year plans for their waste management systems. In June 1992, the MOE also released its Initiatives Paper No. 4, Measuring Progress Towards Ontario's Waste Reduction Targets. This paper provides guidance for monitoring progress toward achieving the Province's waste reduction targets.

The Ministry of the Environment still plans to release initiatives papers dealing with how the new waste management system is to be funded and markets for the Blue Box recycling program. The Provincial Government is also beginning to discuss the introduction of a deposit and/or refillable bottle system for beverage containers.

Because many of the initiatives which the Provincial Government is undertaking or plans to undertake involve municipalities or areas which municipalities have traditionally overseen, many components of the MOE's expansive program also have implications for the legislative authority which municipalities have, or should have, in managing municipal solid waste. This, too, then has been factored into the MMA's discussion paper, Municipal Waste Management Powers in Ontario, and its suggested options for reforming the waste management legislation.

4 MMA DISCUSSION PAPER

The MMA's discussion paper, Municipal Waste Management Powers in Ontario, was designed to examine the powers municipalities would need if they are to implement waste management strategies which effectively meet current and future challenges. The paper describes the framework of municipal waste management in Ontario, develops principles for statutory municipal waste management powers, and offers options for new statutory powers.

The first third of Municipal Waste Management Powers in Ontario provides a background overview of the various factors in the field of municipal solid waste management which have made it necessary to review municipalities' legislative authority for waste management. The second third of the paper provides a brief overview of the state of municipal legislative authority in Ontario, and the last third of the paper has options for changing the legislation of two key components -- functions and the distribution of authority.

In the functions section, the options mentioned are for permissive powers for municipalities so each municipality can decide which powers it needs to use from the list of those available in the legislation. While the MMA states that all municipalities already have some of the powers, and some have most of the powers - though the legislation governing this area may be ambiguously worded - it says the proposed options are designed to clarify the existing provisions, expand their scope, and extend them to all municipalities. The options mentioned in this section also do not state which municipal tier, upper or lower, should exercise these powers.

The MMA paper's second section then discusses three options for allocating the "main functional powers" i.e. collection, 3Rs programs, and disposal powers between the two levels of municipal government in regional municipal and county systems.

5 AMO'S RESPONSE

AMO's response to the MMA's Municipal Waste Management Powers in Ontario deals with each of the

optional powers in the two key areas of functions and distribution of authority. In each section, AMO notes the options available, the present system, municipal comments on the options, and its recommended action for reform.

In reviewing the MMA's paper, however, AMO notes that the options offered by the Provincial Government were only options and not recommendations or proposals. In the section "Regulating the Flow of Waste", AMO points out that the options contained in the MMA's paper do not include the full range of options available. AMO then calls for more exploration and discussion of this area before any legislation is passed.

AMO's response was formulated through AMO's Environmental Policy Committee with input from most of AMO's Section Executive Committees. The response was reviewed and endorsed by AMO's Executive Committee at its June 1992 meeting.

6 FUNCTIONS

6.1 General Waste Management

6.1.1 The MMA's Option

The MMA's option is that permissive authority should be given to municipalities to manage all types of waste: solid, liquid, and hazardous. This authority would include: planning, developing, and operating waste management facilities; closing and decommissioning them; and providing perpetual care of decommissioned sites. It would also include providing services for collecting, reducing, reusing, recycling, and disposing of discarded material. The power to develop facilities for waste management activities would include the ability to purchase land for developing such facilities.

The MMA's option said permissive authority for 3Rs could include: providing treatment and processing facilities that use discarded matter as raw material; establishing promotional and educational programs related to waste management; selling and marketing the products of waste; as well as doing research and development, and assuming ownership of patents related to waste management.

6.1.2 The Current System

Under the Municipal Act, municipalities already have permissive authority for collecting and disposing of municipal solid waste.

Most municipalities, however, do not have explicit authority to provide such waste diversion activities as recycling. The four regional municipalities and one county which do have these powers include: 1) the Municipality of Metropolitan Toronto and the Regional Municipalities of Halton and Durham, which have waste diversion powers but vague legislative provisions which emphasize recovery rather than 3Rs programs, and 2) the Regional Municipality of Waterloo and the County of Lanark, which have legislation governing waste diversion powers which expressly include authority to establish 3Rs programs.

All other municipalities do not have explicit authority under the Municipal Act or through most regional municipal legislation to provide such waste diversion activities as recycling. But, because of the high demand for waste reduction and recycling, many municipalities have, either alone or together, begun some programs in this area. Others have postponed developing facilities or starting activities in this area because they do not have the legislative authority and could end up in court without the legal authority to defend their actions.

Because the Province is planning to make such initiatives as source separation mandatory for residences in most municipalities, the MMA argues that there is becoming even more need for explicit legislative authority in this area. The powers noted are what the MMA considers to be the full range of authorities which would be needed in this area to promote diversion programs, source separate and process materials, conduct research related to developing waste management programs, and market recycled materials to end-users.

6.1.3 AMO's Past Positions

AMO has called for many of these authorities in several of the recommendations in its reports, The Waste Management Planning and Approvals Process (March 1989), The Municipal Waste Abatement Strategy (November 1989), Municipal Solid Waste Management:

Whose Problem Is It? (August 1990), and AMO's Policy Position on Reduction and Reuse (91-11, June 1991).

In particular, AMO has:

- repeatedly said municipalities should establish 4Rs programs of reduction, reuse, recycling and recovery of energy from waste; and
- said in Recommendation #23, point 2 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991), that the Ontario government should emphasize that reserve funds which plan for the future should also include replacement and perpetual care costs.

6.1.4 Municipal Comment

The Regional Municipality of Hamilton-Wentworth has asked for legislative authority to provide it with authority to engage in 3Rs activities.

The Regional Municipality of Haldimand-Norfolk has asked for the legislative authority to provide it with recycling powers.

Metropolitan Toronto has asked the Provincial Government to provide it with the authority to engage in recycling activities by granting it legislative authority similar to that contained in section 169b of the Regional Municipality of Waterloo Act.

The Regional Municipality of Peel has asked the Provincial Government to replace the existing waste management legislation governing it with comprehensive new waste management legislation.

6.1.5 AMO's Recommendations

a) Permissive Authority

The MMA's discussion paper states that the options presented are for permissive authority. AMO and its member municipalities are concerned that the legislative authorities which are eventually introduced in the waste management area should be permissive and not mandatory. This is important to allow municipalities the authority to construct the waste management system best suited to their own areas.

RECOMMENDATION #1:

The Provincial Government should ensure that the authorities which are introduced for municipal waste management are permissive and not mandatory.

b) Solid, Liquid and Hazardous Waste

The MMA option says municipalities should be given the permissive authority to manage liquid waste. AMO supports this option since municipalities which have the capacity to manage liquid wastes should have the legislative authority to do so.

The management of hazardous waste is currently a provincial responsibility. But, many municipalities collect and accept hazardous waste from households and small commercial establishments. Municipalities do this because many consumer products - such as household cleaners, paints and varnishes, batteries, used motor oil, pesticides and herbicides - can pose serious hazards to both public health and the environment if they are disposed of improperly. Several municipalities collect these wastes by operating household hazardous collection days, depots or even "toxic taxis", which pick up this waste from homes and small businesses.

The MMA says municipalities need explicit powers to continue to provide these important services for household hazardous waste. The services are important because if municipalities can substantially or completely eliminate household hazardous waste from landfill disposal, they could alleviate the threat these materials pose to ground water and reduce leachate problems from landfills.

AMO supports the option for hazardous wastes for the same reasons stated in response to the management of liquid wastes: municipalities which have the capacity to manage hazardous wastes should have the permissive legislative authority to do so.

RECOMMENDATION #2:

The Provincial Government should provide municipalities with the permissive legislative authorities to manage solid, liquid and hazardous waste.

When this section was reviewed by AMO's Rural Ontario Municipal Association Executive Committee, it noted that rural municipalities are concerned about having farm spray containers collected so they do not end up in municipal landfills. In responding to this concern, AMO learned that the Ministry of the Environment is beginning to address this problem. It has obtained a certificate of approval to collect farm containers in part of the Regional Municipality of Peel. Through this, it is operating pilot projects to attempt to collect this waste.

Since the Ministry of the Environment has recognized this problem and begun to address it, AMO is recommending that it proceed with this work and institutionalize a program for collecting farm spray containers.

RECOMMENDATION #3:

The Ministry of the Environment should continue, and expand throughout the province, its programs for collecting farm spray containers.

AMO is also concerned about consumer knowledge and handling of household hazardous waste. AMO is thus recommending that several major steps be taken. The Provincial Government should:

- encourage, and financially support, the research and development work of members of the private sector which are developing environmentally-safe alternatives for household products containing potentially hazardous waste;

- work with the Federal Government, where appropriate, to regulate packaging containing potential household hazardous waste so these are appropriately labelled to state the most environmentally-sound disposal method for both the contents and containers. AMO believes strongly that this is an area which should be overseen by the Province and, where possible, the federal government, and not municipalities so there is provincial and, where possible, federal uniformity for participating manufacturers;

- require that the industrial sectors which generate materials containing potential household hazardous waste should contribute to the process of, and financing for, a consumer education campaign for household hazardous waste disposal; and

- work with the industrial sector to ensure that their public education campaigns include information which:

  a) provides consumers with information regarding what constitutes a household hazardous waste;

  b) specifies what alternatives can be substituted for these products; and

  c) states what consumers can do with components of the waste not used, including the containers.

RECOMMENDATION #4:

The Provincial Government should:

- **encourage, and financially support, the research and development work of members of the private sector which are developing environmentally-safe alternatives for household products containing potentially hazardous waste;**
- **in conjunction with the Federal Government, where appropriate, regulate packaging containing potential household hazardous waste so these are appropriately labelled to state the most environmentally-sound disposal method for both the contents and containers;**
- **require that the industrial sectors which generate materials containing potential household hazardous waste should contribute to the process of, and financing for, a consumer education campaign for household hazardous waste disposal; and**
- **work with the industrial sector to ensure that their public education campaigns include information which:**
  - **a) provides consumers with information regarding what constitutes a household hazardous waste;**
  - **b) specifies what alternatives can be substituted for these products; and**
  - **c) states what consumers can do with components of the waste not used, including the containers.**

d) Site Care:

The MMA's paper offers municipalities the authority to close and decommission sites, and provide perpetual care of decommissioned sites.

AMO recommends that municipalities should only be given the authority to close, decommission, and provide perpetual care of decommissioned sites if these sites are municipal sites. Municipalities should not be responsible for closing, decommissioning, and providing perpetual care for private sector landfill sites.

RECOMMENDATION #5:

The Provincial Government should state in legislation that municipalities should only be given the authority to close, decommission, and provide perpetual care of decommissioned sites if these sites are municipal sites.

AMO is concerned, however, about the future of private landfill sites which may be in a municipality. AMO is thus also recommending that the Ministry of the Environment charge owners of private landfill sites a security deposit (which could include alternative mechanisms such as front-end financing, surcharges on tipping fees, bonds, letters of credit, etc.) for landfill closure and perpetual care. Some or all of this security deposit could eventually be returned to private site owners who properly close and provide perpetual care for their sites. For those owners who do not do this, the money from the deposit would be used to close and provide perpetual care for the site.

RECOMMENDATION #6:

The Ministry of the Environment should charge owners of private landfill sites a security deposit for landfill closure and perpetual care. Some or all of this deposit could be returned to those owners who properly close and provide perpetual care of their sites. For those owners who do not do this, the money would be used to close and provide perpetual care for the site.

e) General Waste Management:

The MMA paper offers the following options for general permissive authorities for municipalities:

- planning, developing and operating waste management facilities;
- providing services for collecting, reducing, reusing, recycling, and disposing of discarded material;
- developing facilities for waste management activities, which would include the ability to purchase land for

developing such facilities; and
- providing treatment and processing facilities which use discarded matter as raw material.

AMO agrees municipalities should have these permissive legislative authorities.

RECOMMENDATION #7:

The Provincial Government should provide municipalities with the legislative authority to:

- **plan, develop and operate waste management facilities;**
- **provide services for collecting, reducing, reusing, recycling, and disposing of discarded material;**
- **develop facilities for waste management activities, which would include the ability to purchase land for developing such facilities; and**
- **provide treatment and processing facilities which use discarded matter as raw material.**

f) Recycling Markets:

The MMA paper offers the option that municipalities be given permissive authority to both sell and market the products of waste.

AMO has repeatedly said, most recently in Recommendation #26 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991), that the Ontario government should:

- continue to assist with the development of markets for recyclable materials; and
- urge the federal government to help develop markets for recyclable materials and mechanisms to ensure those markets.

AMO agrees that municipalities should have the permissive authority to sell and market the products of waste, but it supports this with caveats. One is that the Provincial Government should recognize and fulfil its obligation to aggressively develop markets for the

products of waste. The second is that the Provincial Government should also address and secure the price base for marketing of products. Only when this is done does AMO believe that municipalities should be involved in marketing these products.

RECOMMENDATION #8:

The Provincial Government should:

a) recognize and fulfil its obligation to aggressively develop markets for the products of waste; and

b) address and secure the price base for marketing of products of waste.

Only when this is done should municipalities be involved in marketing these products. Then, municipalities should have the authority to both sell and market the products of waste.

g) Promotion and Education:

The MMA paper offers the option that municipalities be given permissive authority to establish promotional and education programs related to waste management.

AMO has said municipalities should have this authority, but work in this area should be jointly undertaken by municipalities, the Provincial Government and the private sector. It is important to have Provincial Government involvement so that a Province-wide education campaign can be developed. It is also important to have private sector involvement as it is often that sector's products which are involved in the waste stream.

AMO stated this in Recommendation #32 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991). At that time, AMO said the Ontario government should:

- make public education a primary plank in its waste reduction strategy;
- establish a joint public education program involving

the private sector, municipalities and the Ministry of the Environment;

- ensure the program provides a clear and co-ordinated message to all parts of the Province; and
- ensure the program also educates residents of different municipalities about their particular waste management system, general waste management issues, and new programs or initiatives requiring their involvement.

In February 1991, the Provincial Government also said in its Waste Reduction Action Plan (WRAP) that it would develop a comprehensive public education program on waste reduction for the public, schools, municipalities and industries. This would include working with the National Packaging Task Force to eliminate some of the confusion regarding the recycling symbol.

AMO urges the Provincial Government to work with municipalities and the private sector to develop a province-wide public education program on waste management and waste reduction.

RECOMMENDATION #9:

AMO urges the Provincial Government to work with municipalities and the private sector to develop a province-wide public education program on waste reduction and waste management.

h) Research and Development:

The MMA paper offers the option that municipalities be given permissive authority to do research and development.

AMO said in Recommendation #14 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991) that the Ontario government should:

- take the lead role in developing the legislation and technology necessary to meet the Ministry of the Environment's waste diversion goals. Any necessary legislation or regulation should be developed by a working group which consists of the Provincial Government, municipalities and the private sector;

- assume a leadership role in accumulating information about the various waste reduction technologies available;
- assess the viability of these technologies so municipalities can adopt the Province's recommended technologies. This would be more efficient than having each municipality individually review each new technology; and
- conduct more research and development into this area.

AMO agrees that the Provincial Government should give municipalities the permissive authority to do research and development. However, the responsibility for such work should rest with the Provincial Government and it should take a lead role in waste management research and development. Municipalities can then do the research and development they deem necessary and not be mandated in this area by the Provincial Government.

RECOMMENDATION #10:

The Provincial Government should take the lead in waste management research and development. Municipalities should then be given the permissive authority to do research and development, but the choice to do this work should be left with the municipality and not mandated by the Province.

i) Patents:

The MMA paper offers the option that municipalities be given permissive authority to assume ownership of patents related to waste management.

AMO agrees that municipalities should have the authority to assume ownership of patents related to waste management development which they have chosen to do and totally funded. If a municipality and the Provincial Government work together on a patent, then the patent and financial benefits from it should be shared by both.

RECOMMENDATION #11:

The Provincial Government should give municipalities the permissive authority to assume ownership of patents related to waste management development which they have chosen to do and totally funded.

If a municipality and the Provincial Government work together on a patent, then the patent and financial benefits from it should be shared by both.

6.2 Increased Penalties

6.2.1 The MMA's Option

The MMA offers the option that penalties for breaching municipal by-laws related to solid waste management be increased to equal those in the Environmental Protection Act.

6.2.2 The Current System

The current maximum penalty for breaching municipal by-laws related to waste management is $5,000. Increasing this to the level provided by the Environmental Protection Act would mean significantly higher fines could be levied against those who violate municipal waste management by-laws. Such higher penalties already apply for violating municipal by-laws pertaining to sewer use.

6.2.3 AMO's Past Positions

AMO does not have a previous position on this area.

6.2.4 Municipal Comment

Metropolitan Toronto has asked the Provincial Government for the legislative authority to permit:

- it to prosecute anyone who disposes waste in violation of area or Metropolitan municipal by-laws;

- it to raise the permissible fine levels to those provided for in sewage control by-laws; and
- the court to order expenses incurred by the Metropolitan corporation for clean-up to be repaid.

6.2.5 AMO's Recommendation

AMO agrees that the Provincial Government should give municipalities the permissive authority to increase the penalties for breaching municipal by-laws related to solid waste management so they equal those in the Environmental Protection Act.

But AMO notes that when penalties are substantially increased, a larger enforcement unit is needed to provide the proof necessary to ensure that these penalties can be enforced. With limited budgets and staffs, many municipalities will not be able to afford to take advantage of the benefit of this provision.

RECOMMENDATION #12:

The Provincial Government should give municipalities the permissive authority to increase the penalties for breaching municipal by-laws related to solid waste management so they equal those in the Environmental Protection Act.

6.3 Access to Property

6.3.1 The MMA's Option

The MMA's option is that municipalities should be given permissive power to enter properties for the purpose of conducting soil tests and planning studies related to site selection for waste management facilities, subject to appropriate safeguards of the rights of private property owners.

6.3.2 The Current System

Under the current system, municipalities are often frustrated in their efforts to develop waste management facilities because they have no authority to enter

property to conduct tests which can determine whether a particular site is appropriate for a waste management facility.

Because such a power to enter private property might infringe on private property owners' rights, the MMA has said property owners' rights would have to be protected.

6.3.3 AMO's Past Positions

In Municipal Solid Waste Management, Whose Problem Is It? (August 1990), AMO said in Recommendation #27c) that the Ontario government should create legislation with an efficient and fair procedure to allow proponents to enter and use private property for waste management planning studies. Municipal authority provided by this amendment could be used where property owners refuse consent to those wishing to enter their premises for these studies.

6.3.4 Municipal Comment

To date there has been no known independent municipal request for this authority.

6.3.5 AMO's Recommendation

AMO agrees with the MMA's option of giving municipalities the permissive authority to enter properties for the purpose of conducting soil tests and planning studies related to site selection for waste management facilities.

AMO also agrees that these entrances should be subject to appropriate safeguards of the rights of private property owners. However, AMO is recommending that if there are further discussions on the rights of these property owners, then AMO, on behalf of its member-municipalities, should be consulted on what those safeguards should be.

RECOMMENDATION #13:

AMO urges the Provincial Government to give municipalities the permissive power to enter properties for the purpose of conducting soil tests and planning studies related to site selection for waste management facilities.

If there are further discussions about how these property owners' rights must be safeguarded during these entries, AMO urges the Provincial Government to work with AMO to develop what these safeguards should be.

6.4 Regulating the Flow of Waste

6.4.1 The MMA's Options

Among the options which might be considered for defining the power of municipalities to control the flow of waste generated within their boundaries are:

Option A:

Permissive authority to direct residential waste to designated waste management facilities.

Permissive authority to require source separation of materials discarded by households.

Permissive authority to designate those materials discarded by households that must be diverted from disposal.

Option B:

Permissive authority to direct residential waste to designated waste management facilities; also permissive authority to direct IC&I (institutional, commercial, and industrial) discarded materials for which diversion facilities have been developed by the municipality.

Permissive authority to require source separation of residential waste; also permissive authority to require source separation of materials discarded by the IC&I sector that must be diverted, provided the municipality has developed waste diversion facilities for these materials.

Permissive authority to designate materials discarded by

households which must be diverted; also permissive authority to designate materials discarded by the IC&I sector that must be diverted, provided that the municipality has developed diversion facilities for that material.

Option C: Permissive authority to direct residential waste to designated waste management facilities; also permissive authority to direct IC&I waste for which the municipality has a waste diversion strategy accepted by the Ministry of the Environment. In reviewing a waste diversion strategy, the MOE would consider the administrative and technical expertise of the municipality, as well as the content of the plan and the degree to which it complies with provincial requirements and objectives.

Permissive authority to require source separation of residential waste; also permissive authority to require source separation of materials discarded by the IC&I sector which must be diverted and for which the municipality has a waste diversion strategy.

Permissive authority to designate materials discarded by households which must be diverted; also permissive authority to designate materials discarded by the IC&I sector which must be diverted and for which the municipality has a waste diversion strategy.

6.4.2 The Current System

Counties which have waste disposal powers as well as the Regional Municipality of Waterloo can direct residential waste to designated waste disposal facilities. But other regional municipalities and lower tier municipalities do not have this authority.

The IC&I sector includes factories, hotels, restaurants, shopping malls, private offices, schools and hospitals, and accounts for about 60 per cent of all municipal solid waste in Ontario. Although it is generally collected and disposed of by private firms, municipalities in some areas of the Province collect and operate programs to collect and process recyclables from the IC&I sector.

In some areas, waste which the private sector collects from the IC&I sector is disposed of in their own landfill sites. In other areas, the private firms dispose of this waste in municipally-owned and operated sites. This is,

in fact, becoming the norm in some parts of the Province as there is a shortage of private waste disposal facilities. That problem is being compounded by the fact that in recent years, very few new private waste disposal sites have been approved in Ontario.

An additional factor in this area is that the Provincial Government is initiating plans, through the Ministry of the Environment's Initiatives Paper No. 2, Waste Management Planning in Ontario, to make municipalities responsible for planning to reduce the waste in their areas by 25 per cent by the end of the year 1992 and 50 per cent by the end of the year 2000. While that will not be mandated, it will be expected by the Province, and municipalities will have to plan for both the residential and IC&I sector, even if they do not have control over the waste flow in the IC&I sector.

6.4.3 AMO's Past Positions

AMO does not have a previous policy stand which directly discusses these topics.

However, AMO has said:

- in Recommendation #9, point 2 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991) that the Ontario Government should increase its funding assistance for municipal IC&I diversion programs to stimulate the necessary emphasis in this sector;
- in Recommendation #23, point 1 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991) that the Ontario Government should realize that a significant portion of landfills, and thus the tipping fees generated by them, are controlled by private operators and are not under the direct regulatory control of municipalities; and
- in the last point on page ten of AMO's Response to Regulatory Measures to Achieve Ontario's Waste Reduction Targets (91-21, November 1991), that the Province should clarify that it is responsible for enforcing the regulations which are related to IC&I waste audits, packaging audits and work plans. If, as the MOE staff has inferred, there is to be a transfer of authority from the Province to the municipalities, then the appropriate funding should also accompany the transfer of authority so municipalities will have

the ability to carry out this area which the Province will have mandated that they enforce.

6.4.4 Municipal Comment

The City of Kingston has asked the Provincial Government for the authority to permit municipalities to control out-of-region waste import and control various solid waste flows within municipalities.

6.4.5 AMO's Recommendation

In Option A, municipalities would have the authority to manage only residential waste. This could be done through directing residents or having upper tier municipalities direct lower tier municipalities. This option now exists in the Regional Municipality of Waterloo, which can direct the waste collected by its local municipalities to designated disposal facilities. Counties which have assumed the waste disposal function also have similar powers.

There are two major concerns with this option. One is that lower tier municipalities may not wish to be directed by the upper tier government to specific facilities. The other relates to the fact that the Provincial Government is directing municipalities to reduce all of the waste stream - both residential and IC&I waste -- by 50 per cent by the year 2000. If municipalities do not have control over the flow of IC&I waste, then many municipalities believe they would not be able to implement plans to manage the IC&I waste.

In Option B, municipalities would have the permissive authority to direct both the residential and IC&I waste for which the municipality has facilities.

The advantage of this option is that municipalities could develop more large-scale facilities than they could for Option A. Municipalities would also be able to collect recyclables from the residential sector and part of the IC&I sector. There could also be more revenue available to municipalities under both Option B and C.

The MMA has identified three disadvantages to this option, but none of them are disadvantages to the municipal sector. The first is that the MMA believes

that by allowing municipalities powers which might potentially permit them to monopolize parts of the waste management system, this option could result in reduced competition and thwart development of new technologies by the private sector. The second disadvantage is that those parties which are opposed to municipal control of the IC&I waste stream would likely find this option an intrusion into the marketplace. The third disadvantage is that there may be concern that if municipal control of some recyclables can be exercised outside the context of an approved plan, as it could be with this option, the resultant uncertainty might discourage waste management industry investment.

Municipalities' main concern with Option B is that it does not provide broad enough authority for those municipalities which need it to fulfil the waste diversion goals the Province is expecting of them. The Province is expecting municipalities to reduce all of the waste generated within their boundaries - both residential and IC&I - by 50 per cent by the year 2000. This would be difficult to do under this option because it only allows municipalities the permissive authority to divert the IC&I waste for which the municipality has developed diversion facilities.

Option C provides municipal authority for both residential and IC&I waste as long as the municipality has a plan which has been accepted by the MOE. This option would provide municipalities with the most authority over the widest area.

The advantage of this option is that municipalities would have almost total authority to plan for and manage all waste generated within their boundaries. It would permit municipalities to develop and implement comprehensive strategies for the entire waste stream. They could then monitor the degree to which waste reduction targets are being met in the municipality. The option would also allow private/public sector co-ordination in developing facilities so all facilities would be assured of a supply of waste and the risk would be reduced. As in Option B, municipalities would also have more revenue coming from their facilities to finance their waste management options.

Again, the major disadvantage to this option is one which applies to the private sector rather than municipalities. It is that private firms would have to

operate within a municipally-controlled framework and they might object to this on the basis that this could be seen as restraining competition among suppliers of waste management services. Some municipalities are also concerned about how they will be able to enforce this option because it gives municipalities a very large jurisdictional area.

When AMO reviewed the options, it noted that the MMA's discussion paper only offers three. Other options, such as the control of certificate of approvals on new facilities, do exist. AMO suggests that the Province invite both the private sector and municipalities to work with the Provincial Government to identify other options in this area. These could then be discussed and decided upon before new legislation is introduced.

Furthermore, in its review of the options, AMO has several questions and concerns: what does "acceptance" of a plan by MOE mean? what is the relationship of the referenced "plan" to the waste management master planning process discussed in Initiatives Paper No.2? would this requirement hamstring the process of developing and implementing waste diversion strategies? (i.e. MOE in the plan approvals process)? could municipalities still operate waste diversion programs in the interim if a "plan" was not in place? AMO believes the connection between options for regulating the flow of waste and the proposals for waste management master plans must be examined more thoroughly.

AMO supports that municipalities should have powers to control the flow of waste generated within their boundaries. However, AMO does not support any of the options provided in the paper and recommends that further discussion of options for regulating the flow of waste be conducted.

RECOMMENDATION #14:

AMO supports that municipalities should have powers to control the flow of waste generated within their boundaries. However, AMO recommends that other options for regulating the flow of waste need to be examined and that this should occur within the context of the planning process recommendations made in AMO's response to Initiatives Paper No. 2: Waste Management Planning in Ontario. The Provincial Government should conduct further discussions with municipalities and the private sector on these options.

6.5 Compensating Municipalities with Landfill Facilities

6.5.1 The MMA's Options

Among possible options in considering the issue of compensation to municipalities for hosting landfill sites are:

Option A: Do not give municipalities power to require compensation from waste disposal site operators and rescind the power currently found in legislation affecting counties and certain regional municipalities.

Option B: Extend the municipal power to require compensation from waste disposal operators to all municipalities with waste disposal authority, but restrict the amount of compensation to waste management related costs (for example, the development of a reserve fund for replacing the waste disposal facility, subsidizing 3Rs collection and programs, for extra expenditure on road maintenance, etc.). The compensation would be subject to appeal to the Ontario Municipal Board.

Option C: Extend the power to require compensation from waste disposal operators to all municipalities with waste disposal powers, without restrictions on the use of the funds received, subject to appeal to the Ontario Municipal Board.

6.5.2 The Current System

Local municipalities and most regional municipalities currently do not have the power to require compensation from waste disposal site operators (Option A). Waste disposal operators who do not have to pay the host municipalities compensation can charge a lower rate for waste disposal than those who are required to pay municipalities a levy.

Some regional municipalities - Halton, Durham, York and Waterloo, and counties which have assumed waste disposal authority have the power to require compensation from waste disposal operators seeking to locate facilities within their boundaries (Option B). In some cases, municipalities without such explicit authority have also been obtaining compensation from waste disposal operators, many of whom consider it a cost of doing business since offering financial benefits sometimes overcomes opposition to a landfill site being located in a municipality.

6.5.3 AMO's Past Positions

AMO has no previous position on this area.

6.5.4 Municipal Comment

The Regional Municipality of Hamilton-Wentworth has asked the Provincial Government for the legislative authority to ensure that regional consent is required for operating a waste disposal site within the regional area and that the region may impose terms and conditions on the operator, including the payment of compensation subject to an appeal to the Ontario Municipal Board.

6.5.5 AMO's Recommendation

Option A would not be accepted by those municipalities which are currently levying a charge against waste disposal operators.

Option B would allow municipalities to require compensation, but limit it to an amount related to the cost of operating their waste management systems. However, one could argue a waste disposal facility has

an impact on a municipality which goes beyond direct expenses and the indirect impact should be taken into account in estimating the level of compensation. For instance, developing a waste disposal site reduces the number of future sites available to a municipality for developing its own landfill facility.

Option C, for which some larger municipalities have called, would allow municipalities to require compensation from waste disposal operators. This could result in higher costs for private operators and municipalities which have to rely on facilities outside of their areas, but the MMA believes the right to appeal to the Ontario Municipal Board would moderate those charges.

On the other hand, the higher cost incurred by a municipality for locating a waste disposal site outside its boundaries might be an incentive to municipalities to seek landfill facilities within their own boundaries. This option is expected to meet with even more private sector opposition than Option B.

Considering the options, AMO chose Option B. AMO supports the fact that Option B restricts "the amount of compensation to waste management related costs". This restriction was not present in Option C.

RECOMMENDATION #15:

To compensate municipalities with landfill facilities, the Provincial Government should give municipalities the permissive authority outlined in Option B of the Ministry of Municipal Affairs' discussion paper, Municipal Waste Management Powers in Ontario.

This option would extend the municipal power to require compensation from waste disposal operators to all municipalities with waste disposal authority, but restrict the amount of compensation to waste management related costs. The compensation would be subject to appeal to the Ontario Municipal Board.

6.6 Regulating Tipping Fees

6.6.1 The MMA's Options

Among the possible options which could be considered in deciding whether to permit municipalities to regulate tipping fees at waste management facilities are:

Option A: Do not grant municipalities the power to regulate the tipping fees of waste management facilities which are not their own. This is the current situation.

Option B: Give municipalities permissive authority to regulate tipping fees for all facilities (private or municipal) which are part of their waste management systems in or outside municipal boundaries, in accordance with the waste diversion strategy accepted by the Ministry of the Environment.

6.6.2 The Current System

Some upper tier municipalities can charge their local municipalities for waste disposal by weight, volume or class of waste, while other municipalities do not have this power.

Municipalities do not have the authority to regulate tipping fees charged by other waste disposal facilities. Some impose high fees for the use of their own facilities in an effort to reduce waste generation but these fees may be undercut by private operators.

6.6.3 AMO's Past Positions

In Recommendation #33 of Municipal Waste Management: Whose Problem Is It? (August 1990), AMO said Ontario municipalities should be given authority to approve the establishment and continued use of private waste disposal systems in their jurisdiction in order to better manage the solid waste stream.

While this AMO recommendation addressed the general topic area, it did not address the question of tipping fees for this topic area.

6.6.4 Municipal Comment

There has, to date, been no known independent municipal request for this authority.

6.6.5 AMO's Recommendation

Option A retains the status quo, which would not be acceptable to some larger municipalities.

Option B provides municipalities with the authority to regulate tipping fees in private facilities in or outside of these boundaries. This would allow some municipalities, which already try to reduce waste generation by imposing high fees for the use of their own facilities, to continue that policy. These municipalities argue this authority is necessary because their strategies to reduce waste generation would fail if IC&I waste generators could send their waste to less expensive facilities. Enactment of this option would also ensure that if municipalities were permitted to direct waste to designated facilities - see the options under Regulating the Flow of Waste - a method would then be established to ensure that such facilities charged similar prices for similar services. One major drawback of this option is that the private sector is expected to oppose it since it would give municipalities control over prices for the use of waste management facilities.

Given these two options, AMO chose Option B. The enactment of this permissive authority, which would allow municipalities to regulate tipping fees for all facilities. AMO also recommends that as with the municipal authority to require compensation from waste disposal operators, there should be a provision for appeal of private tipping fees to the Ontario Municipal Board.

RECOMMENDATION #16:

The Provincial Government should give municipalities the permissive authority to enact Option B under the "Regulating Tipping Fees" portion of the Ministry of Municipal Affairs' discussion paper, Municipal Waste Management Powers in Ontario.

This option would give municipalities the permissive authority to regulate tipping fees for all facilities - private or municipal - which are part of their waste management systems in or outside municipal boundaries, in accordance with the waste diversion strategy accepted by the Ministry of the Environment. Private tipping fees should be subject to appeal to the Ontario Municipal Board.

6.7 Charging for Waste Management Services

6.7.1 The MMA's Options

Consideration could be given to the following options regarding the methods municipalities might use to charge for waste management services:

Option A: Municipalities could be granted the authority to charge for disposal of waste by class, volume, weight, or any criteria they choose.

Option B: Municipalities could be granted authority to charge for collecting and disposing of waste by class, volume, weight, or any criteria they choose.

6.7.2 The Current System

Local municipalities are allowed to charge taxpayers a monthly fee for solid waste management services or to impose taxes based on the assessed value of a tax payer's property. But the Municipal Act does not expressly provide local municipalities with authority to impose user charges on their residents.

Many regional municipalities and all counties with waste disposal powers are allowed to charge for waste disposal by weight, volume, class, or other criteria. This authority can be used by an upper tier municipality with waste disposal powers for levying landfill charges against lower tier municipalities.

Municipalities do not have the legislative authority to institute a user charge scheme for waste collection.

6.7.3 AMO's Past Positions

AMO has addressed the question of municipalities charging for waste disposal, particularly through tipping fees, through several of its recommendations:

- In Recommendation #36 of Municipal Solid Waste Management: Whose Problem Is It? (August 1990), AMO said all Ontario municipalities should:
  a) set their tipping fees so these reflect the total life-cycle cost of operating their solid waste management systems;
  b) dedicate the revenue from tipping fees to fund their integrated waste management system.
- In Recommendation #23 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991), AMO said the Ontario government should realize that a significant portion of landfills, and thus the tipping fees generated by them, are controlled by private operators and are not under the direct regulatory control of municipalities (point one).

AMO has also addressed the question of municipalities charging fees for residential waste collection in Recommendation #22 of AMO's Policy Position on Reduction and Reuse (91-11, June 1991). In it, AMO said the Ontario government should provide municipalities with permissive legislative authority to collect user-pay fees for the collection of residential garbage.

6.7.4 Municipal Comment

A number of cities, including Kingston, Waterloo, and Peterborough, have asked for the authority to institute user-pay fees for waste collection. The City of Waterloo has specifically requested that it be able to charge

owners and occupants for garbage collection.

6.7.5 AMO's Recommendation

Option A relates to tipping fees, which many municipalities can now set. This option would allow all municipalities with waste disposal powers to charge for waste disposal by weight, volume, class, or other criteria - even if that meant they charged the lower tier municipality.

Option B relates both to tipping fees - as noted in Option A - and user-pay fees, which many municipalities have been asking for permissive authority to institute. There is a growing interest by municipalities in the user-pay option. Some argue that it would not only bring in more revenue for municipalities, but also cause people to reduce their waste. AMO has asked the Ontario government to allow municipalities to have the permissive authority to institute user-pay fees for the collection of residential garbage.

RECOMMENDATION #17:

The Provincial Government should give municipalities the permissive authority to enact Option B under the "Charging for Waste Management Services" portion of the Ministry of Municipal Affairs' paper, Municipal Waste Management Powers in Ontario. This option would give municipalities the permissive authority to charge for collecting and disposing of waste by class, volume, weight, or any criteria they chose.

7 DISTRIBUTION OF AUTHORITY

7.1 Allocating Authority to Upper Tier and Lower Tier Municipalities

7.1.1 The MMA's Options

The MMA paper looks at options for allocating the main functional powers between the two levels of municipal

government in regional municipal and county systems. AMO believes that consideration and recognition must be given to single tier municipalities in the discussions of allocating authorities. Therefore, single tier municipalities should be permitted to assume the same permissive authorities recommended for upper tier municipalities.

MMA provides the following options for distributing solid waste management powers between lower and upper tier municipalities in counties and in regional municipalities:

Option A: All waste management powers of local municipalities would be transferred to regional municipalities and counties; upper tier municipalities would be granted 3Rs powers and be permitted to delegate transferred and 3Rs powers to local municipalities and set the terms and conditions for such delegation.

Option B: Regional municipalities and counties would be granted authority over solid waste disposal and 3Rs programs but local municipalities would retain the authority to collect waste, subject to terms and conditions established by the upper tier municipalities. Upper tier municipalities would be granted authority to assume collection services, with the agreement of the local municipality or municipalities.

Option C: Regional municipalities would be granted authority over solid waste disposal. Lower tier municipalities would be granted authority over 3Rs and would retain authority over collection; upper tier municipalities would have the authority to assume collection and 3Rs powers from their local municipalities, with agreement from them.

In counties, lower tier municipalities would retain all waste management powers, but the county would be granted the authority to assume any or all such powers from lower tier municipalities (as provided in Bill 201, 1989).

7.1.2 The Current System

Ontario has 832 municipalities with varying population, responsibilities, administrative capability and financial resources. Some of these municipalities are single-tier (such as separated towns and cities and most northern

Ontario municipalities), some are in county systems, and some are in regional municipal systems. Some parts of northern Ontario also have no form of municipal government.

Under the Municipal Act, municipalities already have permissive authority for collecting and disposing of municipal solid waste, but waste diversion (3Rs or recycling) powers are not specifically included in the Municipal Act or in most regional municipal legislation.

Until recently, waste management services were provided exclusively by the lower tier municipality in the county system. After Bill 201 was passed in July 1989, it became possible for each of Ontario's 26 counties - located in southern Ontario - to assume waste collection and disposal powers from the local municipalities which traditionally provided this service. To date, only Simcoe and Northumberland Counties have passed by-laws to assume all waste management powers from their local municipalities. Several other counties have assumed some powers, such as waste disposal or 3Rs programs.

In the 13 regional municipalities, waste collection is generally a local municipal function while waste disposal is usually an upper tier responsibility. In the Regional Municipality of Niagara and the District Municipality of Muskoka, the upper tier can only proceed with waste disposal activities with the agreement of the lower tier municipalities.

In some areas, the local municipalities have entered into agreements with other municipalities in the same situation to provide waste management facilities and services. Some do this only for disposal, others work together to collect, treat and sell recyclables.

7.1.3 AMO's Past Positions

AMO does not have a previous position which addresses which level of municipality should be responsible for waste management.

7.1.4 Municipal Comment

The District Municipality of Muskoka has asked the Provincial Government to provide the district with

legislation transferring all municipal waste management responsibilities to the district level.

7.1.5 AMO's Recommendation

All three options would provide the possibility of having upper tier municipalities manage the municipal solid waste system. This is a direction in which the Ministry of the Environment's staff has indicated it would like to see municipalities move.

Option A would grant the upper tier municipality power over all aspects of waste management. This would encourage development of large-scale, integrated, co-ordinated and comprehensive waste management systems geared to waste reduction, but it may make it more difficult to meet the unique service requirements of each community. The upper tier's powers could be delegated to the lower tier municipality.

Option B would legislate a division of waste management responsibilities so the upper tier was responsible for disposal and 3Rs programs and the lower tier municipality would be responsible for collection. Upper tier municipalities could assume the lower tier's authorities, but lower tiers could not assume the upper tier's authorities as in Option A.

Option B could result in a much less integrated system and also have serious cost and financing implications for the various municipalities involved because the authorities are divided between two municipal tiers. But some local municipalities might prefer it, except for having the upper tier set conditions for how they collect waste.

Option C reflects the situation now in some municipalities, with the upper tier responsible for waste disposal, the lower tier responsible for collection and 3Rs, and the upper tier able to assume collection and 3Rs powers from the lower tier if the lower tier agrees.

Under this option, local municipalities could develop collection and 3Rs programs for their own circumstances, and counties which provide waste management services in accordance with Bill 201 could continue to do so without interruption. Lower tier municipalities in a regional municipal system could

assign their responsibilities to the upper tier. In counties, the lower tier municipalities would retain all waste management authority but the county could assume it.

One disadvantage of this option is that there could be some difficulties - as in Option B - with implementing a large-scale, comprehensive waste management system which promotes waste reduction. Also, as in Option B, there could be severe cost implications since regional municipalities would be responsible for disposal, which can generate revenue from tipping fees, but lower tier municipalities would be responsible for the more expensive options of the 3Rs (in particular recycling) and waste collection.

AMO reviewed the three options and noted that none addressed the financial implications which could result. However, AMO stated its preference for Option C. However, it said Option C, as the MMA presents it, differentiates between regional municipalities and counties with each having a different system. To ensure uniformity, AMO recommended that the Provincial Government adopt Option C with the deletion of "with agreement from them" at the end of the first paragraph. That means upper tier municipalities would have the authority to assume collection and 3Rs powers from their local municipalities without those municipalities' agreement. That would mean the authority which counties now have under Bill 201 (1989) would also apply to the regional municipalities.

RECOMMENDATION #18:

The Provincial Government should provide municipalities with the permissive authority noted in Option C of the "Allocating Authority to Upper Tier and Lower Tier Municipalities" portion of the Ministry of Municipal Affairs' discussion paper, Municipal Waste Management Powers in Ontario, but with one exception. That exception is that it should remove the clause "with agreement from them" so that upper-tier municipalities do not need the agreement of their local municipalities to assume the authority for collection and 3Rs powers from these local municipalities.

8 OTHER MUNICIPAL AUTHORITIES

In its research for this response, AMO has identified one other area which could be addressed through the legislative reforms which the Ministry of Municipal Affairs is planning to make to provide these new permissive authorities for municipalities to manage municipal solid waste management.

This concern was raised by Lambton County. It noted that under Bill 35, An Act respecting the amalgamation of the City of Sarnia and the Town of Clearwater and the addition of the amalgamated City to the County of Lambton, (July 1989), it had taken over responsibility for waste disposal - including the municipal landfills - from its local municipalities. However, it was unable to broaden the service areas for these landfills to serve the entire county without having a mandatory hearing under the Environmental Protection Act (EPA). The EPA hearings are long and expensive and a decision may be made long after the county needs the landfill space so Lambton had not, at the time of this report, proceeded with that action.

Lambton's situation has raised a serious municipal concern and AMO is thus recommending that the Provincial Government amend the legislative authority governing upper tier municipalities to allow upper tiers the ability to broaden the service area of a landfill (which the upper tier has assumed responsibility for from a lower tier) to serve the entire county or region. This could be done with public consultation or other Environmental Protection Act (EPA) requirements, but it should not require a full hearing for a site for which the upper tier has taken responsibility.

RECOMMENDATION #19:

The Provincial Government should amend the legislative authority governing upper tier municipalities to allow upper tiers the ability to broaden the service area of a landfill (which the upper tier has assumed responsibility for from a lower tier) to serve the entire county or region. This could be done with public consultation or other Environmental Protection Act (EPA) requirements, but it should not require a full hearing for a site for which the county or region has taken responsibility.

9 CONCLUSION

The Association of Municipalities of Ontario appreciates this opportunity to comment on the Ministry of Municipal Affairs' (MMA) discussion paper, Municipal Waste Management Powers in Ontario. The issues raised in this discussion paper are critical for reforming municipalities' legislative, or statutory, authority for waste management and AMO is glad that the Provincial Government now is addressing them.

AMO has made nineteen recommendations regarding various areas of legislative authority raised in the MMA's paper. As it completes its response, it urges the Provincial Government to adhere to the recommendations which AMO has made and immediately introduce the necessary changes into provincial legislation.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: The Provincial Government should ensure that the authorities which are introduced for municipal waste management are permissive and not mandatory.

RECOMMENDATION 2: The Provincial Government should provide municipalities with permissive legislative authorities to manage solid, liquid and hazardous waste.

RECOMMENDATION 3: The Ministry of the Environment should continue, and expand throughout the Province, its programs for collecting farm spray containers.

RECOMMENDATION 4: The Provincial Government should:

- encourage, and financially support, the research and development work of members of the private sector which are developing environmentally-safe alternatives for household products containing potentially hazardous waste;
- in conjunction with the Federal Government, where appropriate, regulate packaging containing potential household hazardous waste so these are appropriately labelled to state the most environmentally-sound disposal method for both the contents and containers;
- require that the industrial sectors which generate materials containing potential household hazardous waste should aid with the process of, and financing for, a consumer education campaign regarding household hazardous waste disposal; and,
- work with the industrial sector to include in their public education campaign information which:
  a) provides consumers with information regarding what constitutes a household hazardous waste;
  b) specifies what alternatives can be substituted for these products; and,
  c) states what consumers can do with components of the waste not used, including the containers.

RECOMMENDATION 5: The Provincial Government should state in legislation that municipalities should only be given the authority to close, decommission, and provide perpetual care of decommissioned sites if these sites are municipal sites.

RECOMMENDATION 6: The Ministry of the Environment should charge owners of private landfill sites a security deposit for landfill closure and perpetual care. Some of all of this deposit could be returned to those owners who properly close and provide perpetual care of their sites. For those owners who do not do this, the money would be used to close and provide perpetual care for the site.

RECOMMENDATION 7: The Provincial Government should provide municipalities with the legislative authority to:

- plan, develop and operate waste management facilities;
- provide services for collecting, reducing, reusing, recycling, and disposing of discarded material;
- develop facilities for waste management activities, which would include the ability to purchase land for developing such facilities; and
- provide treatment and processing facilities which use discarded matter as raw material.

RECOMMENDATION 8: The Provincial Government should:

a) recognize and fulfil its obligation to aggressively develop markets for the products of waste; and
b) address and secure the price base for marketing of products of waste.

Only when this is done should municipalities be involved in marketing these products. Then, municipalities should have the authority to both sell and market the products of waste.

RECOMMENDATION 9: AMO urges the Provincial Government to work with municipalities and the private sector to develop a Province-wide public education program on waste reduction and waste management.

RECOMMENDATION 10: The Provincial Government should take the lead in waste management research and development. Municipalities should then be given the permissive authority to do research and development, but the choice to do this work should be left with the municipality and not mandated by the Province.

RECOMMENDATION 11: The Provincial Government should give municipalities the permissive authority to assume ownership of patents related to waste management development which they have chosen to do and totally funded.

If a municipality and the Provincial Government work together on a patent, then the patent and financial benefits from it should be shared by both.

RECOMMENDATION 12: The Provincial Government should give municipalities the permissive authority to increase the penalties for breaching municipal by-laws related to solid waste management so they equal those in the Environmental Protection Act.

RECOMMENDATION 13: AMO urges the Provincial Government to give municipalities the permissive power to enter properties for the purpose of conducting soil tests and planning studies related to site selection for waste management facilities.

If there are further discussions about how these property owners' rights must be safeguarded during these entries, AMO urges the Provincial Government to work with AMO to develop what these safeguards should be.

RECOMMENDATION 14: AMO supports that municipalities should have powers to control the flow of waste generated within their boundaries. However, AMO recommends that other options for regulating the flow of waste need to be examined and that this should occur within the context of the planning process recommendations made in AMO's response to Initiatives Paper No. 2, Waste Management Planning in Ontario. The Provincial Government should conduct further discussions with municipalities and the private sector on these options.

RECOMMENDATION 15: To compensate municipalities with landfill facilities, the Provincial Government should give municipalities the permissive authority outlined in Option B of the Ministry of Municipal Affairs' discussion paper, Municipal Waste Management Powers in Ontario.

This option would extend the municipal power to require compensation from waste disposal operators to all

municipalities with waste disposal authority, but restrict the amount of compensation to waste management related costs. The compensation would be subject to appeal to the Ontario Municipal Board.

RECOMMENDATION 16: The Provincial Government should give municipalities the permissive authority to enact Option B under the "Regulating Tipping Fees" portion of the Ministry of Municipal Affairs' discussion paper, Municipal Waste Management Powers in Ontario.

This option would give municipalities the permissive authority to regulate tipping fees for all facilities - private or municipal - which are part of their waste management systems in or outside municipal boundaries, in accordance with the waste diversion strategy accepted by the Ministry of the Environment. Private tipping fees should be subject to appeal to the Ontario Municipal Board.

RECOMMENDATION 17: The Provincial Government should give municipalities the permissive authority to enact Option B under the "Charging for Waste Management Services" portion of the Ministry of Municipal Affairs' paper, Municipal Waste Management Powers in Ontario. This option would give municipalities the permissive authority to charge for collecting and disposing of waste by class, volume, weight, or any criteria they chose.

RECOMMENDATION 18: The Provincial Government should provide municipalities with the permissive authority noted in Option C of the "Allocating Authority to Upper Tier and Lower Tier Municipalities" portion of the Ministry of Municipal Affairs' discussion paper, Municipal Waste Management Powers in Ontario, but with one exception. That exception is that it should remove the clause "with agreement from them" so that upper tier municipalities do not need the agreement of their local municipalities to assume the authority for collection and 3Rs powers from these local municipalities.

RECOMMENDATION 19: The Provincial Government should amend the legislative authority governing upper tier municipalities to allow upper tiers the ability to broaden the service area of a landfill (which the upper tier has assumed responsibility

for from a lower tier) to serve the entire county or region. This could be done with public consultation or other Environmental Protection Act (EPA) requirements, but it should not require a full hearing for a site for which the county or region has taken responsibility.

APPENDIX A - ACKNOWLEDGMENTS

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